

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

ETAMENTAL, LLC,

Plaintiff,

v.

OPINIONLAB, INC.,

Defendant.

CIVIL ACTION NO. 2:14-cv-628

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

1. This is an action for patent infringement in which Etamental, LLC (“Etamental” or “Plaintiff”), makes the following allegations against OpinionLab, Inc. (“OpinionLab” or “Defendant”).

PARTIES

2. Plaintiff is a Texas limited liability company with its principal place of business at 1333 W. McDermott Drive, Suite 200, Allen, Texas 75013. Etamental’s president is Daniel F. Perez.

3. On information and belief, Defendant OpinionLab, Inc., is a Delaware corporation with its principal place of business at 549 W. Randolph St., Suite 401, Chicago, Illinois 60661. Defendant does not appear to have a registered agent in Texas.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

6. On information and belief, OpinionLab is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District.

COUNT I

WILLFUL INFRINGEMENT OF U.S. PATENT NO. 6,895,437

7. Plaintiff is the owner by assignment of United States Patent No. 6,895,437 ("the '437 Patent") entitled "System For Monitoring Browsing Activity Of A Visitor And Decrementing A Reference Count Upon A Web Page Change For Automatic Unloading A Client Program"—including all rights to recover for past and future acts of infringement. The '437 Patent issued on May 17, 2005. A true and correct copy of the '437 Patent is attached as Exhibit A.

8. Upon information and belief, OpinionLab has been and now is directly or through intermediaries is making, made, having made, installing, installed, using, used, importing, imported, providing, provided, supplying, supplied, distributing, distributed, selling, sold, offering and/or offered for sale products and/or systems (the "infringing products/systems") that infringe or, when used by their intended users in the manner intended by OpinionLab, infringe(d) one or more claims of the '437 Patent in the State of Texas, in this judicial district, and elsewhere in the United States. Without limiting or waiving Plaintiff's right to later amend or supplement its Complaint, OpinionLab's infringing products/systems are advertised and marketed generally by OpinionLab as their "[+]" products and services – including, but not limited to, website feedback, mobile feedback, data collection and reporting. Use of these infringing products and services, in their intended manner and as designed and/or programmed, appear to infringe one or more claims of the '437 Patent. Furthermore, OpinionLab offers design, reporting and analysis

services utilizing the infringing products and services, where end-users use the infringing products and services do so under the influence and control of OpinionLab. OpinionLab thus directly and indirectly infringes, jointly infringes, contributes to and/or induces infringement of one or more claims of the '437 Patent. Defendant OpinionLab is thus liable for infringement of the '437 Patent pursuant to 35 U.S.C. § 271(a), (b) & (c).

9. The '437 Patent is cited as a reference on 13 different U.S. Patents issued to OpinionLab – the earliest of which was issued on August 1, 2006. Knowledge of the '437 Patent may therefore be imputed to OpinionLab since at least that date.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

1. A judgment in favor of Plaintiff that Defendant has infringed, directly, jointly, and/or indirectly, by way of inducing and/or contributing to the infringement of the '437 Patent;
2. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '437 Patent;
3. A judgment and order requiring Defendant to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '437 Patent as provided under 35 U.S.C. § 284;
4. An award to Plaintiff for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendant's prohibited conduct with notice made at least as early as August 1, 2006, as provided under 35 U.S.C. § 284;
5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees; and
6. Any and all other relief to which Plaintiff may show itself to be entitled.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

May 14, 2014

Respectfully Submitted,

ETAMENTAL, LLC

By: /s/ Ronald W. Burns

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ATTORNEY FOR PLAINTIFF

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